I, Nancy Coverdell, certify that I mailed a copy of this document, postage prepaid, to all parties or their counsel of record. I certify under penalty of perjury, under the laws of the State of Washington, that the foregoing is true and correct.

Dated: _____ at: Olympia, WA.

By: _____

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In re Application No. 96-1 Olympic Pipe Line Company Cross Cascade Pipeline Project	DEPARTMENT OF FISH AND WILDLIFE'S OPENING BRIEF

Olympic Pipe Line Company (OPL) has applied to the Energy Facility Site Evaluation Council (EFSEC or Council) for a Site Certification Agreement (SCA) for construction and operation of a proposed refined oil products pipeline from Woodinville to Pasco, Washington, a distance of approximately 230 miles. The Department files this Opening Brief : 1) to introduce the Department to the Council; 2) to recommend a roadmap for the Council's decision making process; and 3) to explain how and where the Department's analysis and information, submitted to assist the Council, fits related to that roadmap.

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE

The Washington Department of Fish and Wildlife moved for status as a Party in the spring of 1996, and has been reviewing the project since the fall of 1995. The Department is charged by statute with protecting and preserving the State's plenary sovereign interest in fish and wildlife. Title 75 and 77 RCW. Wildlife are property of the state. RCW 77.12.010. The term "wildlife" includes "all species of the animal kingdom whose members exist in Washington

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in a wild state." RCW 77.08.010(16). The Department "shall preserve, protect, and perpetuate wildlife," including the fish defined as wildlife. RCW 77.12.010.

The Department accomplishes its mandate of protection, preservation, and management in four main ways: 1) by providing technical, scientific, and policy resources to other entities, particularly governments; 2) by regulating all manner of activities, construction projects, dams, obstructions, and diversions in waters of the state which may impact fish or fish habitat; 3) by enforcing laws and regulations preventing illegal take and/or unlawful harm; and 4) by providing and regulating recreational, commercial, and scientific access to fish and wildlife resources, but only when consistent with protecting and preserving those resources.

This proceeding is an example of the Department assisting another state agency, the Council, by serving as an expert technical resource regarding fish and wildlife resources, potential impacts to those resources, and possible protection, mitigation, and enhancement measures. The Department is participating as a formal party to the adjudicatory hearing, and in addition, the Department has provided comments on the Council's Draft Environmental Impact Statement (DEIS).

In this proceeding, with respect to procedural matters, it is the Department's position that since OPL has requested the SCA, it should be OPL's burden to comply with the Council's application procedures, and it should be OPL's burden to go forward and prove the merits of its case for a SCA. The Department's role is to assist the Council: 1) by providing a general overview of the fish and wildlife resources potentially impacted by the project; 2) by providing expert technical review of the information submitted by OPL; 3) by identifying information gaps, inaccuracies, or uncertainties in the information submitted by OPL; 4) by analyzing OPL's proposed natural resource protection, mitigation and enhancement measures, and where

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necessary recommending modifications to measures or additional measures; and lastly 5) in cases where protection, mitigation, or enhancement measures cannot adequately address the impacts of the project to the environment, or in those cases where there is insufficient or inadequate information to determine what the impacts will be or whether protection and mitigation measures will adequately address those impacts, by advocating the Council recommend denial of the application.

ROADMAP TO COUNCIL DECISION MAKING PROCESS

The Department supports and adopts the Counsel for the Environment's view of the nature and order of the questions before the Council. The Council's considering the issues in this manner helps to create a framework by which the substantive evidence can be placed in a logical and useable order. By that ordered analysis, the Council first examines whether there is any public need for the project. Rephrased, the first inquiry should be whether the project is necessary to ensure an abundant supply of petroleum products to central and eastern Washington at a reasonable cost to the ultimate consumer. RCW 80.50.010(3); Council for Environment Brief, p. 4.

If the Council were to determine that the project was not needed, the Council could recommend denial of the OPL application without further analysis. The Council could also chose to hear the remainder of the case to determine whether the construction and operation of the project would create such benefit to the environment, that siting the project was appropriate notwithstanding the lack of need for the project. RCW 80.50.010(2).

The other case occurs if, in the first inquiry, the Council finds a need for the project. Upon a finding of need, the Council would then examine whether need for the project outweighs the environmental harm that may result from the project.

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In either case above, it is beyond the Department's purview and expertise to attempt to assist the Council in answering questions regarding the need for the project. The Department has, however, provided the testimony of eight witnesses to assist the Council in assessing OPL information regarding the environmental impacts expected from the project.

DEPARTMENT OF FISH AND WILDLIFE'S TESTIMONY

As noted above, the Department has been reviewing this project since the fall of 1995. The Department has assigned primary responsibility for project review to Fish and Wildlife Biologist Gary Sprague. As the Department's supervising coordinator, Mr. Sprague's testimony provides a brief description of the mission of the Department in order to give a context to his and the other Department witnesses testimonies. Mr. Sprague is the Department witness with the most extensive Department involvement in reviewing the project and attempting to assess the expected impacts. He begins by detailing the Department's difficulty with this proposal, in that OPL and its' consultants have, often for good reason, changed the route location and stream crossing methodology a number of times since filing of the Application. The level of filed OPL analysis is broad, and leaves detailed analysis of specific location and construction feasibility issues for a design phase after the SCA is issued. For this reason, it has been very difficult and time consuming to determine specific areas of impact, the expected level of impact, and alternative methods or locations to avoid or mitigate the impacts.

Therefore, based on the uncertain location of the project; the current lack of detail as to the construction methodology to be used at the more difficult and resource important sites; and the resulting lack of specific protection, mitigation and enhancement measures to be undertaken to address the currently unknown specific impacts to fish and wildlife resources; the Department,

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through Mr. Sprague's testimony, recommends that the Council deny the project application as insufficiently definite upon which to make an affirmative recommendation.

In the case that the Council proceeds with the hearing, and notwithstanding the difficulties in determining the location and impacts of the project, Mr. Sprague and the remainder of the Department witnesses have provided general testimony about the likely impacts given their assumption of the pipeline location. Mr. Sprague's specific testimony provides a Terminology section in which he describes or defines a number of the scientific or specialized terms that other fisheries and wildlife witnesses use. The balance of Mr. Sprague's testimony addresses generally expected construction impacts, relating the impact to the harm caused to fish or wildlife resources. In this part of his testimony, Mr. Sprague focuses on the several different but related negative impacts that result from construction in streams and other watercourses. Impacts occurring at or near water courses are of particular concern because they affect not only the immediate habitat and resources, but also because the impacts are carried downstream by the flow of water and therefore the impacts are distributed over a greater area. Impacts distributed over a greater area indirectly affect more resources and a larger amount of habitat.

Found in Mr. Sprague's testimony, and in almost all of the other government and other fishery biologists testimony, is concern about the likely impacts to fish resources and their habitats from increased sedimentation due to construction in the watercourses. Due to the nature of their life cycles, sedimentation impacts to a year class of fish, for example, salmon, last for a long number of years. Sedimentation impacts occur not only at the direct site of construction but are carried downstream affecting other habitats.

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Mr. Sprague also identifies several other related impacts occurring at water crossings including loss of riparian habitat, potential for injury when handling fish; and impacts from hydrostatic testing.

Mr. Sprague next discusses several of the proposed pipeline sites, including the potential for alternative routes and specific water crossings. Mr. Sprague then presents a short analysis of the increased risks to natural resources posed by the project, followed by a discussion of the issues and likely impacts expected from operation of the project.

The remaining Department witnesses, other than Mr. Jeff Skriletz, discuss fish or wildlife resources or expected construction and operation impacts along the project corridor from west to east.

Fish and Wildlife Biologist Tony Opperman is a WDFW Area Habitat Biologist. As a Habitat Biologist he routinely considers permit applications for construction projects affecting waters of the state. Mr. Opperman's testimony covers his experience and recommendations regarding the importance of avoiding construction in rivers and streams, by rerouting pipelines to existing bridge or other structure crossings. He details the impacts generally resulting from stream trenching, boring, and directionally drilling. He also discusses the steep nature of the streams in the east end of the Snoqualmie Valley, and identifies some of the likely scour and stream head-cutting problems expected there.

Fish and Wildlife Biologist Eric Anderson is a Fish Specialist working in the Yakima River Basin. Mr. Anderson's area of coverage starts at the crest of the Cascades and goes east through the Yakima River Basin. Mr. Anderson's testimony provides information about the resident and anadromous fish resources in the upper Yakima River basin. Mr. Anderson explains that although the Department is mandated to protect all fish and wildlife species, it allocates

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additional resources and advocates special protection for those resources of special public significance or in depressed or critical states. When identifying the fish species present in the Yakima drainage, Mr. Anderson notes the depressed status of bull trout, westslope cutthroat trout and pygmy whitefish. He also notes the economic, cultural, and social importance of Yakima River salmon and steelhead runs, even though their status is also depressed. After identifying the species and status of the fish resources, Mr. Anderson explains that even though a number of the tributaries may not contain fish resources all of the time, the interconnected nature of the tributaries, reservoirs, and rivers allow construction impacts like sedimentation to potentially have far reaching negative impacts on the fish resources and their habitat. Concern also exists for the likelihood that any operational spill into a watercourse could similarly have wide ranging negative impacts to important but already depressed fish populations.

Fish and Wildlife Biologist Brent Renfrow is a WDFW Area Habitat Biologist. Mr. Renfrow's geographic area of responsibility is similar to that of Mr. Eric Anderson, which is from the crest of the Cascades east to the Columbia River. With experiences typical of Department Habitat Biologists, Mr. Renfrow's testimony focuses on the many specific types on impacts expected from construction and recommends either avoidance techniques or mitigation measures. Siting to avoid the most important remaining or productive habitats is one of Mr. Renfrow's messages. Specific monitored construction practices and extensive restoration measures are detailed in his testimony regarding construction practices. Mr. Renfrow also identifies pipeline operational issues, and makes recommendations to address those issues.

Fish and Wildlife Biologist Ron Friesz is a WDFW Area Habitat Manager whose area of responsibility is east of the Columbia River. Mr. Friesz's testimony addresses the three main habitat types between the Columbia River crossing and the terminal of the project in Pasco,

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Washington. The three fish and wildlife habitat types along this stretch of the project are shrub steppe habitat, stream crossings, and wetland crossings. Mr. Friesz provides an overview of the topography along this stretch and then explains the nature and wildlife value of shrub steppe habitat. Mr. Friesz then identifies, by specific sites, the most important expected habitat impacts and measures to be used for avoidance or mitigation. While all the shrub steppe impacts are important, Mr. Friesz notes the shrub steppe habitat along the proposed stretch in Grant County, just east of the Columbia River crossing, is particularly valuable and important to protect. Mr. Friesz then discusses the general issues related to stream crossings, and following the same site by site review, identifies the most important sites and avoidance or mitigation measures to be used at those sites. Lastly, Mr. Friesz discusses the wetland types along the project, the fish and wildlife resources which use those wetlands, and the likely project impacts to those wetlands.

The testimony of Department witnesses Bob Zeigler and Jerry Benson are a little different from the above witnesses in that Mr. Zeigler and Mr. Benson are Department specialists who focus on a particular type of fish and wildlife habitat rather than having a specific geographic area of responsibility. Mr. Zeigler is the Department's wetlands specialist, and his testimony provides a grounding in the basic types and values of wetlands, their value in the environment, and their value as habitat for fish and wildlife. Mr. Zeigler discusses the importance of impact avoidance and the difficulties with mitigation. Mr. Zeigler identifies wetland creation, restoration, or enhancement ratios used to mitigate unavoidable construction impacts to differing types and qualities of wetlands.

Jerry Benson is a Vegetation Management Biologist and is the Department's eastside specialist in vegetation propagation for wildlife habitat. Mr. Benson describes the interrelationship between native vegetation and the value as wildlife habitat. His testimony

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includes information about the fragile nature of shrub steppe habitat and the difficulties in restoring disturb habitats in eastern Washington. Given the different types of habitat in the eastern stretches of the project, Mr. Benson recommends the Council require a revegetation scheme that accounts for elevation, precipitation, and soil characteristics as the best system for restoring productive natural vegetation beneficial to wildlife resources.

Lastly, the Department presents the testimony of Fish and Wildlife Biologist Jeff Skriletz. At the time of writing his testimony, Mr. Skriletz was a member of the Department's Oil Spill Team, although he has since transferred to a position in the Fish Management division of the Department. Based on his experiences with oil spills, oil impacts to fish and wildlife, and differing types of spill response, Mr. Skriletz testifies to the main expected habitat impacts, and the likely pathways by which spilled refined oil products injure fish and wildlife resources. Mr. Skriletz makes several recommendations regarding spill preventative measures to be taken to lessen the harmful impacts to natural resources.

CONCLUSION

The Energy Facility Site Evaluation Council should recommend denial of the Cross Cascades Pipeline project because there is not sufficient information to determine the location of the project, or the impacts to fish and wildlife resources to be expected from the project. Without knowing where and how the project will be constructed, the Council cannot protect and enhance the affected environment, let alone mitigate negative impacts.

If the Council is to proceed with the hearing, the Department of Fish and Wildlife witnesses provide general information about the Fish and Wildlife resources and their habitats and, where possible, identify specific resources and recommend either avoidance of impacts or

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mitigation measures to protect those resources.

DATED this _____ day of April, 1999.

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